

The Honorable Suzanne R. Parisien
Noted for Hearing: March 31, 2023
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STACY IRWIN and KIMBERLY FERREIRO,

Plaintiffs,

v.

CITY OF SEATTLE, a municipal corporation
under the laws of the State of Washington,

Defendant.

No. 21-2-11739-9 SEA

**PRAECIPE RE: MOTION TO QUASH
AND/OR FOR PROTECTIVE ORDER
REGARDING SUBPOENA FOR
DEPOSITION AND PRODUCTION OF
DOCUMENTS**

On March 20, 2023, this firm filed a Motion to Quash and/or For Protective Order in connection with a subpoena to former Mayor Jenny Durkan. The Note for Motion, Motion, Declaration of Mr. Shaw, and Proposed Order all misstated that this firm represented the City of Seattle, rather than former Mayor Durkan. Corrected copies of the documents are attached hereto as **Exhibit A**.

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DATED this 21st day of March, 2023

K&L GATES LLP

By: /s/ G. William Shaw
G. William Shaw, WSBA # 8573
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Attorneys for Jenny Durkan

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of March, 2023, I caused the foregoing document to be served via the Court's Electronic Service and by email to all parties listed below:

Jeffrey L. Needle
Law Office of Jeffrey L. Needle
7015 Second Avenue, Suite 1050
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Susan B. Mindenbergs
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DATED this 21st day of March, 2022.

/s/ Dawnelle Patterson

Dawnelle Patterson
Sr. Practice Assistant

Corrected Note for Motion, Motion, Declaration, and Proposed Order in Support of
Motion to Quash Plaintiffs' Subpoena to Former Mayor Durkan

EXHIBIT A

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

STACY IRWIN and KIMBERLY FERREIRO,

Plaintiffs,

v.

CITY OF SEATTLE, a municipal corporation under the laws
of the State of Washington,

Defendant

**CASE NO. 21-2-11739-9 SEA
NOTICE OF COURT DATE (Judges)
(NOTICE FOR HEARING)
SEATTLE COURTHOUSE ONLY
(Clerk's Action Required) (NTHG)**

TO: THE CLERK OF THE COURT and to all other parties per list on Page 2:
PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to note this issue on the calendar checked below.

Calendar Date: March 31, 2023 **Day of Week:** Friday

**NATURE OF MOTION: JENNY DURKAN'S MOTION TO QUASH AND/OR FOR
PROTECTIVE ORDER REGARDING SUBPOENA FOR DEPOSITION AND
PRODUCTION OF DOCUMENTS**

CASES ASSIGNED TO INDIVIDUAL JUDGES – SEATTLE

If oral argument on the motion is allowed (LCR 7(b)(2)), contact staff of assigned judge to schedule date and time before filing this notice. **Working Papers:** The judge's name, date and time of hearing must be noted in the upper right corner of the Judge's copy. **Deliver Judge's copies to Judges' Mailroom at C-203**

Without oral argument (Mon – Fri)

With oral argument Hearing Date/Time: March 31, 2023 at 9:00am

Judge's Name: Suzanne R. Parisien Trial Date: June 12, 2023

CHIEF CRIMINAL DEPARTMENT – SEATTLE (E-955)

Bond Forfeiture 3:15 pm, 2nd Thursday of each month

Extraordinary Writs from criminal or infraction (Show Cause Hearing) LCR 98.40(d) 3:00 p.m. Mon-Thurs.

Certificates of Rehabilitation- Weapon Possession (**Convictions from Limited Jurisdiction Courts**)

3:30 First Tues of each month

CHIEF CIVIL DEPARTMENT – SEATTLE (W-941) *Telephonic Chief Civil Calendar instructions at:

<https://kingcounty.gov/courts/superior-court/civil/Chief%20Civil%20Calendar.aspx>

- Supplemental Proceedings (LCR 69) (**Thurs** 1:30 pm)
- Structured Settlements (LCR 40(b)(14)) (**Thurs** 1:30 pm)
- Extraordinary Writs (Show Cause Hearing) (LCR 98.40) (**Thurs** 1:30 pm)
- Motions to Consolidate with multiple judges assigned (LCR 42) (without oral argument Mon – Fri)
- Other Chief Civil Motions per LCR: _____ (without oral argument Mon-Fri)

For cases without an assigned judge:

- Dispositive Motions (**Fridays**. Contact bailiff for hearing time)
- Non-Dispositive Motions (without oral argument Mon – Fri)
- Antiharassment Calendar (**Tues** 8:30 am **via Zoom** <https://kingcounty.gov/courts/superior-court/civil.aspx>)
- Motions for Revisions (LCR 7(b)(8)) (**Non-UFC cases only. Motion will be reassigned per LCR 7(b)(8)(B)(ii)**)

You may list an address that is not your residential address where you agree to accept legal documents.

Sign: /s/ G. William Shaw Print/Type Name: G. William Shaw
 WSBA # 8573 (if attorney) Attorney for: Jenny Durkan
 Address: K&L Gates LLP, 925 4th Ave., Suite 2900 City, State, Zip 98104
 Telephone: 206-623-7580 Email Address: Bill.Shaw@klgates.com Date: March 20, 2023

DO NOT USE THIS FORM FOR FAMILY LAW OR EX PARTE MOTIONS.

LIST NAMES AND SERVICE ADDRESSES FOR ALL NECESSARY PARTIES REQUIRING NOTICE	
Jeffrey L. Needle Law Office of Jeffrey L. Needle 7015 Second Avenue, Suite 1050 Seattle, WA 98104 Phone: 206-447-1560 Email: jneedle@jneedlelaw.com Attorney for the Plaintiff	Susan B. Mindenbergs Law Office of Susan B. Mindenbergs 705 Second Avenue, Suite 1050 Seattle, WA 98104 Phone: 206-447-1560 Email: susanmm@msn.com Attorney for the Plaintiff

The Honorable Suzanne R. Parisien
Noted for Hearing: March 31, 2023
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
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STACY IRWIN and KIMBERLY FERREIRO,

Plaintiffs,

v.

CITY OF SEATTLE, a municipal corporation
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Defendant.

No. 21-2-11739-9 SEA

**JENNY DURKAN'S MOTION TO
QUASH AND/OR FOR PROTECTIVE
ORDER REGARDING SUBPOENA
FOR DEPOSITION AND
PRODUCTION OF DOCUMENTS**

I. INTRODUCTION

Ms. Jenny A. Durkan moves to quash Plaintiffs' deposition subpoena to her as former City of Seattle Mayor. Because former Mayor Durkan is a former high-ranking City official, and is not a party to this litigation, she should not be called to testify absent extraordinary circumstances. Plaintiffs' cannot demonstrate such circumstances here. Former Mayor Durkan does not have any unique knowledge relevant to this litigation, and to the extent former Mayor Durkan possess any information relevant to this litigation, other available witnesses can provide the same information. Accordingly, this Court should quash Plaintiffs' deposition subpoena to former Mayor Durkan and enter an order preventing any future effort to depose her in this litigation.

II. STATEMENT OF FACTS

On March 7, 2023, counsel for former Mayor Durkan received Plaintiffs' Subpoena for

1 the Deposition of former Mayor Durkan and corresponding demand for production of
2 documents. Shaw Decl., ¶ 5 and Exhibit A thereto. Former Mayor Durkan served the city from
3 November 2017 through December 2021.

4 On September 3, 2021, Plaintiffs sued the City alleging wrongful discharge, and
5 retaliation. Dkt. #1. Specifically, Plaintiffs’ allege they were retaliated against for their efforts to
6 comply with the Public Records Act (“PRA”), and were allegedly subjected to “scorn, ridicule,
7 abuse, and hostility from Ms. Chen and managers at the City of Seattle.” Dkt. #1, ¶ 4.16.
8 Importantly, the complaint contains no allegations or assertions that former Mayor Durkan was
9 involved in or even aware of any of the alleged improper actions. *See* Dkt. #1. The only
10 statement from former Mayor Durkan that the Plaintiffs have pointed to in their complaint, was
11 made *after* the allegations were investigated, in which former Mayor Durkan wrote in a July 2,
12 2021 letter to Executive Director of the Ethics and Elections Commission of the City of Seattle,
13 Wayne Barnett, that she “also agree[d] that the underlying actions fell short of the obligations
14 under the PRA.” Dkt. #1, ¶ 4.19.

15 III. ISSUES PRESENTED

16 Whether the Court should quash Plaintiffs’ deposition subpoena to former Mayor Jenny
17 Durkan and enter an order preventing any future attempts to depose her because she is a former
18 high-ranking government official, she is not a party to this litigation, she has no unique
19 knowledge regarding the claims and defenses in this lawsuit, having relied on the work and
20 knowledge of other City employees who can provide the same information?

21 IV. EVIDENCE RELIED UPON

22 This motion relies upon the pleadings and files on record, and the Declaration of G.
23 William Shaw and exhibit thereto.

24 V. ARGUMENT

25 A. Washington Law protects former high-ranking government officials from the 26 burden of depositions.

1 Washington’s Civil Rules grant this Court broad authority to control discovery
2 proceedings, including preventing burdensome depositions. CR 26(b)(1)(A) & (c). The Civil
3 Rules “are based on and substantially correspond to the federal rules of civil procedure, so we
4 may look to federal cases interpreting federal discovery provisions for guidance.” *Diaz v.*
5 *Washington State Migrant Council*, 165 Wn. App. 59, 77-78, 265 P.3d 956 (2011) (citing *Bryant*
6 *v. Joseph Tree, Inc.*, 119 Wn.2d 210, 218-19, 829 P.2d 1099 (1992)).

7 When plaintiffs seek to depose a high-ranking government official, federal courts apply
8 the Apex Doctrine. This doctrine provides that high-ranking government officials “should not,
9 *absent extraordinary circumstances*, be called to testify regarding the reasons for taking official
10 actions.” *Id.* (citing *In re United States*, 197 F.3d 310, 313 (8th Cir. 1999) (emphasis added)
11 (adopting federal case law enforcing the Apex Doctrine with regard to the deposition of
12 Washington’s Governor). Washington courts also apply the Apex Doctrine, and “agree with the
13 federal cases that protect high-ranking government officials from discovery when other available
14 witnesses can provide the same information.” *Clarke v. Wash. Atty. General’s Office*, 133 Wn.
15 App. 767, 781-82, 138 P.3d 144 (2006).

16 Under the Apex Doctrine, “if other persons can provide the information sought, the court
17 should not allow discovery against the official.” *Id.*; *see also Shields v. Morgan Financial, Inc.*,
18 130 Wn. App. 750, 125 P.3d 164 (2005) (affirming a protective order precluding the deposition
19 of the CEO and CFO of a company where they did not have knowledge of specific facts related
20 to plaintiff’s claims); *Williams v. Dep’t of Social & Health Servs.*, 24 Wn. App. 2d 1010, No.
21 56240-5-II, 2022 WL 14309083 at *2 (Wash. Ct. App. Oct. 25, 2022) (affirming an order
22 quashing a trial subpoena applying the same CR 26 principles for protective order and that “there
23 was precedent for protecting high-level government officials from being dragged into litigation
24 simply because of their positions”).

25 The purpose of this doctrine is to protect “highly visible public servants from becoming
26 targets for unnecessary or, at worst, harassing discovery requests” *Givens v. Newsom*, 2021

1 WL 65878, at *7 (E.D. Cal. 2021). For this reason, the Apex Doctrine applies with equal force to
2 former officials:

3 ““Former high-ranking government administrators, whose past official conduct
4 may potentially implicate them in a significant number of related legal actions,
5 have a legitimate interest in avoiding unnecessary entanglements in civil
6 litigation.’ That interest survives leaving office.”

7 *Dobson v. Vail*, 2011 WL 4404146, at *1 (W.D. Wash. 2011) (internal citation omitted); *see also*
8 *Givens*, 2021 WL 65878, at *7 (E.D. Cal. 2021) (explaining that the important rationale behind
9 the doctrine “survives their departure from office”). In particular, “subjecting the decision-
10 making processes of former high-ranking government officials ‘to judicial scrutiny and the
11 possibility of continued participation in lawsuits years after leaving public service would serve as
12 a significant deterrent to qualified candidates for public service.” *Vail*, 2011 WL 4404146, at *1
13 (quoting *United States v. Wal-Mart Stores, Inc.*, 2002 WL 562301, at *3 (D. Md. 2002)).

14 **B. This Court should quash the subpoena because Plaintiffs cannot show the
15 extraordinary circumstances necessary to justify former Mayor Durkan’s
16 deposition.**

17 Former Mayor Durkan is entitled to protection given that she is a former high-ranking
18 official, and Plaintiffs cannot meet their burden to establish extraordinary circumstances in this
19 case. To establish such extraordinary circumstances, Plaintiffs’ must show:

20 (1) the official’s testimony is necessary to obtain relevant
21 information that is not readily available from another source; (2)
22 the official has first-hand information that cannot reasonably be
23 obtained from other sources; (3) the testimony is essential to the
24 case at hand; (4) the deposition would not significantly interfere
25 with the ability of the official to perform his governmental duties;
26 and (5) the evidence sought is not available through less
burdensome means or alternative sources.

27 *Barlow v. Washington*, No. C20-5183 BHS, 2021 WL 5910485, *1 (W.D. Wash. 2021); *see also*
28 *Vail*, 2011 WL 4404146, at *2 (burden rests with plaintiff to demonstrate exceptional
29 circumstances.). Under the applicable law, Plaintiffs cannot demonstrate any extraordinary
30 circumstances that would justify taking former Mayor Durkan’s deposition.

1 Given that Plaintiffs are seeking communications between former Mayor Durkan and her
2 former staff and deputies, they cannot meet their burden to establish extraordinary
3 circumstances. Plaintiffs' subpoena seeks two categories of documents. First, communications
4 "between and among Stephanie Formas, and/or Michael Fong, and/or Jenny Durkan . . . referring
5 to" the Plaintiffs. Shaw Decl., Ex. A. Second, they seek documents that reflect communications
6 among Formas, Fong, and Durkan "and/or Mayor's office staff on how to respond to public
7 records request for Mayor Durkan's missing text messages as identified in the SEEC
8 Investigative Report . . ." *Id.* Ms. Formas is the former Chief of Staff to former Mayor Durkan;
9 Mr. Fong is a former Deputy Mayor.

10 The information at issue in Plaintiffs' subpoena is plainly in the possession of others, as
11 they seek communications with the former Mayor and her former colleagues. The materials are
12 "readily available from another source," including Ms. Formas, Mr. Fong, and other staff, and
13 therefore the evidence is "available through . . . alternative sources." Former Mayor Durkan does
14 not have any "first-hand information" about the group's communications that cannot be obtained
15 from either Ms. Formas or Mr. Fong.

16 As a former high-ranking government official, former Mayor Durkan is protected from
17 depositions in most instances, "when other available witnesses can provide the same
18 information." *Clarke*, 133 Wn. App. at 781. In *Clarke*, the plaintiff sought to depose the former
19 State Attorney General in connection with plaintiff's lawsuit against the Attorney General's
20 Office for claims of discrimination and wrongful termination. *Id.* The plaintiff asserted that the
21 former Attorney General's testimony was relevant because, among other things, she was
22 responsible for employment decisions and management of the office. *Id.* Applying federal case
23 law, the court reasoned that other witnesses who were directly involved in the management of
24 the office where the plaintiff worked were "the better source of the firsthand relevant
25 information." *Id.* at 782.

26 Finally, former Mayor Durkan's testimony is simply not essential to the case at hand.

1 Plaintiffs do not even allege that former Mayor Durkan had any involvement with or connection
2 to their claims. Former Mayor Durkan had no knowledge of the alleged retaliatory conditions.
3 Additionally, she had no knowledge of the PRA dispute until after Executive Director Barnett
4 issued his investigative report.

5 **C. Alternatively, Former Mayor Durkan’s Deposition Should be Quashed Under CR**
6 **26.**

7 This Court has considerable power to prevent non-party witnesses, like former Mayor
8 Durkan, from incurring the burden of discovery. *Eugster v. City of Spokane*, 121 Wn. App. 799,
9 813, 91 P.3d 117 (2004). “While parties to a lawsuit must accept its burdens as a natural part of
10 civil litigation, non-parties [] have a different set of expectations. Accordingly, concern for the
11 unwanted burden thrust upon non-parties is a factor *entitled to special weight*” when considering
12 a parties need related to discovery. *Id.* (internal quotation and citations omitted) (emphasis
13 added).

14 Under CR 26(b)(1) the scope of discovery “*shall be limited*” if “the discovery sought is
15 unreasonably cumulative” or “is unduly burdensome . . . , taking into account the needs of the
16 case . . .” (emphasis added). A protective order only requires “good cause,” CR 26(c), which for
17 a former high-ranking official is demonstrated when the official has minimal knowledge of the
18 specific facts, the discovery is duplicative, and there is an opportunity to seek discovery
19 elsewhere. *E.g., Shields v. Morgan Fin., Inc.*, 130 Wn. App. 750, 759-60 (2005). The Apex
20 Doctrine applies these same principles. *Clarke*, 133 Wn. App. at 781; *Barlow*, 2021 WL
21 5910485, *1 (W.D. Wash. 2021). As explained above, former Mayor Durkan has minimal
22 knowledge of the specific facts alleged in this case, and the specific documents and information
23 sought in Plaintiffs’ subpoena involves others, who can just as easily provide them to Plaintiffs.

24 Further, good cause exists to quash this subpoena because of the extensive unwanted
25 burden thrust upon former Mayor Durkan as a nonparty, which is “*entitled to special weight.*”
26 *Eugster*, 121 Wn. App. at 813 (emphasis added). This burden is amplified by the fact that

1 “highly visible public servants [are] becoming targets for unnecessary or, at worst, harassing
2 discovery requests” *Givens*, 2021 WL 65878, at *7 (E.D. Cal. 2021). Given that Plaintiffs
3 are aware of former Mayor Durkan’s lack of involvement, it seems likely that they are merely
4 seeking to elicit information that former Mayor Durkan has already provided in multiple
5 depositions regarding her text messages. *See* Shaw Decl., ¶ 3 (listing dates of depositions in
6 other cases that addressed text messages). Thus, good cause exists here because of the
7 unwarranted burden that will be placed on former Mayor Durkan, who is no longer employed by
8 the City of Seattle, along with the established public interest that qualified candidates for public
9 service should not be deterred from entering office because of the possibility of continued
10 lawsuits after leaving public service.

11 VI. CONCLUSION

12 For the foregoing reasons, this Court should quash Plaintiffs’ subpoena to former Mayor
13 Durkan and enter a protective order preventing Plaintiffs from noting her deposition in the
14 future.

15 DATED this 20th day of March, 2023

16 K&L GATES LLP

17
18 By: /s/ G. William Shaw

19 G. William Shaw, WSBA # 8573

20 Benjamin C. Woodruff, WSBA # 56618

21 Emaan R. Jaber, WSBA # 56990

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Attorneys for Jenny A. Durkan

The Honorable Suzanne R. Parisien
Noted for Hearing: March 31, 2023
Without Oral Argument

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STACY IRWIN and KIMBERLY FERREIRO,

NO. 21-2-11739-9 SEA

Plaintiffs,

**DECLARATION OF G. WILLIAM
SHAW**

v.

CITY OF SEATTLE, a municipal corporation
under the laws of the State of Washington,

Defendant.

I, G. WILLIAM SHAW hereby state and declare as follows:

1. My name is G. William Shaw. I am over the age of eighteen, competent to testify and make the following declaration based on my personal knowledge.

2. I am a partner at K&L Gates, LLP who are counsel for former Mayor Jenny Durkan.

3. Mayor Durkan (ret.) has previously testified in the following depositions regarding various aspects of her text messages. Those cases were *Hunters Capital, LLC v. City of Seattle* No. 20-cv-00983 on December 8, 2021; *Estate of Taylor, et al. v. City of Seattle and King County*, 20-2-14351-1 SEA, on February 28, 2022; and *Seattle Times Company v. City of Seattle* No. 21-2-07268-9 SEA, on March 1, 2022.

1 **CERTIFICATE OF SERVICE**

2 I hereby declare under penalty of perjury under the laws of the State of Washington that
3 on this date, I caused a true and correct copy of the foregoing document to be served on the
4 following in the manner(s) indicated:

5 Susan B. Mindenbergs, WSBA #20545
6 Law Office of Susan B. Mindenbergs
7 705 Second Avenue, Suite 1050
8 Seattle, WA 98104
9 Telephone: (206) 447-1560
10 Facsimile: (206) 447-1523
11 Email: susanmm@msn.com

- Via E-Filing
- Via Legal Messenger
- Via Email
- Via U.S. Mail
- Via Fax

12 *Attorney for Plaintiffs*

13 Jeffrey L. Needle, WSBA #6346
14 Law Office of Jeffrey L. Needle
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- Via E-Filing
- Via Legal Messenger
- Via Email
- Via U.S. Mail
- Via Fax

21 *Attorney for Plaintiffs*

22 DATED this 20th day of March, 2023 at Seattle, Washington.

23 /s/ Dawnelle Patterson
24 Dawnelle Patterson
25 Sr. Practice Assistant
26
27

EXHIBIT A

The Honorable Suzanne R. Parisien
Trial Date: June 12, 2023

Reid

7 May 2023

@ 3:50 pm

See 8

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STACY IRWIN and KIMBERLY FERREIRO,

Plaintiffs,

v.

CITY OF SEATTLE, WASHINGTON, a
municipal corporation under the laws of the
State of Washington,

Defendant.

Case No. 21-2-11739-9 SEA

**SUBPOENA FOR REMOTE VIDEO
CONFERENCE DEPOSITION OF
JENNY DURKAN AND FOR
PRODUCTION OF DOCUMENTS**

TO: **JENNY DURKAN**
c/o G. William Shaw, Esq.
K&L Gates, LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104

TO: CITY OF SEATTLE, WASHINGTON, Defendant; and

TO: JAMES P. SAVITT, BRANDI B. BALANDA, and SARAH GOHMANN BIGELOW,
counsel for Defendant.

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. CR 30(b)(6).

SUBPOENA FOR REMOTE VIDEO CONFERENCE
DEPOSITION OF JENNY DURKAN AND FOR
PRODUCTION OF DOCUMENTS
Case No. 21-2-11739-9 SEA
Page 1 of 5

SUSAN B. MINDENBERGS
ATTORNEY AT LAW
705 SECOND AVENUE, SUITE 1050
SEATTLE, WA 98104
TEL: (206) 447-1560; FAX: (206) 447-1523
SUSANMM@MSN.COM

PLACE OF DEPOSITION Law Office of Susan B. Mindenbergs 705 Second Avenue, Suite 1050 Seattle, WA 98104	DATE AND TIME March 29, 2023, at 10:00 a.m.
	METHOD OF RECORDING Stenographic means

This deposition will be conducted by remote video conference via the Zoom online platform using the following meeting link and login credentials:

<https://us02web.zoom.us/j/85096237295?pwd=ZHBldVlqMEliTjVxdG1Pd1VJNzdFdz09>

Meeting ID: 850 9623 7295
Passcode: 027413

This deposition upon oral examination is subject to continuance or adjournment from time to time or place to place until completed, and to be taken on the grounds and for the reason that said witness will give evidence material to the establishment of the Plaintiffs' case. Said witness will remain in attendance until discharged.

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or tangible things at the place, date, and time specified below:

1. Any and all communications between and among Stephanie Formas, and/or Michael Fong, and/or Jenny Durkan between August 1, 2020 to December 31, 2021, related or referring to Stacy Irwin and/or Kimberly ("Kim") Ferreiro.
2. Any and all documents (including emails, text messages, memos, and notes) which reflect communications among Stephanie Formas, and/or Michael Fong, and/or Jenny Durkan, and/or Mayor's office staff on how to respond to public records requests for Mayor Durkan's missing text messages as identified in the SEEC Investigative Report dated May 6, 2021, Case No. 21-WBI-0304-1 from August 1, 2020 to December 31, 2021, and compliance with the Public Records Act.

PLEASE NOTE: The requested documents may be produced by emailing them as attachments to susanmm@msn.com and jneedle@jneedlelaw.com, with a copy to christine@sbmlaw.net on or before the date and time listed below.


PLACE Law Office of Susan B. Mindenbergs 705 Second Avenue, Suite 1050 Seattle, WA 98104	DATE AND TIME March 29, 2023, at 9:00 a.m.
--	--

FAILURE TO COMPLY WITH THE SUBPOENA MAY RESULT IN CONTEMPT PROCEEDINGS AGAINST YOU.

1 ISSUING OFFICER'S SIGNATURE AND TITLE

DATE

March 6, 2023

2 

3 Susan B. Mindenbergs, WSBA #20545

4 Jeffrey L. Needle, WSBA #6346

Attorneys for Plaintiffs Stacy Irwin and Kimberly Ferreiro

5 ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

6 Susan B. Mindenbergs, WSBA #20545

7 Jeffrey L. Needle, WSBA #6346

7 705 Second Avenue, Suite 1050

8 Seattle, WA 98104

8 Telephone: (206) 447-1560

9 Facsimile: (206) 447-1523

10 Pursuant to CR 45, Sections (c) & (d), you are advised:

11 (c) Protection of Persons Subject to Subpoenas.

12 (1) A party or an attorney responsible for the issuance and service of a
13 subpoena shall take reasonable steps to avoid imposing undue burden or expense
14 on a person subject to that subpoena. The court shall enforce this duty and
15 impose upon the party or attorney in breach of this duty an appropriate
16 sanction, which may include, but is not limited to, lost earnings and a
17 reasonable attorney's fee.

18 (2)(A) A person commanded to produce and permit inspection and copying of
19 designated books, papers, documents or tangible things, or inspection of
20 premises need not appear in person at the place of production or inspection
21 unless commanded to appear for deposition, hearing, or trial.

22 (B) Subject to subsection (d)(2) of this rule, a person commanded to
23 produce and permit inspection and copying may, within 14 days after service
of the subpoena or before the time specified for compliance if such time is
less than 14 days after service, serve upon the party or attorney designated
in the subpoena written objection to inspection or copying of any or all of
the designated materials or of the premises. If objection is made, the party
serving the subpoena shall not be entitled to inspect and copy the materials
or inspect the premises except pursuant to an order of the court by which the
subpoena was issued. If objection has been made, the party serving the subpoena
may, upon notice to the person commanded to produce and all other parties,
move at any time for an order to compel the production. Such an order to compel
production shall protect any person who is not a party or an officer of a
party from significant expense resulting from the inspection and copying
commanded.

1 (3)(A) On timely motion, the court by which a subpoena was issued shall
quash or modify the subpoena if it:

2 (i) fails to allow reasonable time for compliance;

3 (ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this
rule;

4 (iii) requires disclosure of privileged or other protected matter and
no exception or waiver applies; or

5 (iv) subjects a person to undue burden, provided that the court may
condition denial of the motion upon a requirement that the subpoenaing party
advance the reasonable cost of producing the books, papers, documents, or
tangible things.

6 (B) If a subpoena

7 (i) requires disclosure of a trade secret or other confidential
research, development, or commercial information, or

8 (ii) requires disclosure of an unretained expert's opinion or
information not describing specific events or occurrences in dispute and
resulting from the expert's study made not at the request of any party, the
9 court may, to protect a person subject to or affected by the subpoena, quash
or modify the subpoena or, if the party in whose behalf the subpoena is issued
10 shows a substantial need for the testimony or material that cannot be otherwise
met without undue hardship and assures that the person to whom the subpoena
is addressed will be reasonably compensated, the court may order appearance
11 or production only upon specified conditions.

12 **(d) Duties in Responding to Subpoena.**

13 (1) A person responding to a subpoena to produce documents shall produce
them as they are kept in the usual course of business or shall organize and
label them to correspond with the categories in the demand.

14 (2)(A) When information subject to a subpoena is withheld on a claim that
it is privileged or subject to protection as trial preparation materials, the
claim shall be made expressly and shall be supported by a description of the
15 nature of the documents, communications, or things not produced that is
sufficient to enable the demanding party to contest the claim.

16 (B) If information produced in response to a subpoena is subject to a
claim of privilege or of protection as trial-preparation material, the person
17 making the claim may notify any party that received the information of the
claim and the basis for it. After being notified, a party must promptly return,
sequester, or destroy the specified information and any copies it has; must
18 not use or disclose the information until the claim is resolved; must take
reasonable steps to retrieve the information if the party disclosed it before
19 being notified; and may promptly present the information in camera to the
court for a determination of the claim. The person responding to the subpoena
20 must preserve the information until the claim is resolved.

21 [Amended effective July 1, 1972; September 1, 1983; September 1, 1993;
September 1, 2007; January 12, 2010]

1 **PROOF OF SERVICE**

2
3 DATE

PLACE SERVED

4 SERVED ON (PRINT NAME)

MANNER OF SERVICE

5
6 SERVED BY (PRINT NAME)

TITLE

7 **DECLARATION OF SERVER**

8 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
9 information contained in the Proof of Service is true and correct.

10 Executed on

11 _____
DATE/PLACE

12 _____
SIGNATURE OF SERVER

13 _____
ADDRESS OF SERVER

The Honorable Suzanne R. Parisien
Noted for Hearing: March 31, 2023
Without Oral Argument

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STACY IRWIN and KIMBERLY FERREIRO,

Plaintiffs,

v.

CITY OF SEATTLE, a municipal corporation
under the laws of the State of Washington,

Defendant.

NO. 21-2-11739-9 SEA

**[PROPOSED] ORDER REGARDING
JENNY DURKAN'S MOTION TO
QUASH AND/OR FOR PROTECTIVE
ORDER**

CLERK'S ACTION REQUIRED

THIS MATTER came before the Court on the Jenny Durkan's Motion to Quash and/or for Protective Order Regarding Subpoena to Jenny Durkan for Deposition and Production of Documents (the "Motion"). The Court has considered the briefing and the materials filed in support of and in response to the Motion:

1. The Motion;
2. The Declaration of G. William Shaw in support of the Motion and the exhibit thereto;
3. The Plaintiffs' Response to the Motion;
4. Durkan's Reply, if any, on the Motion, and any accompanying declarations and exhibits thereto;

5. The records and pleadings filed in this matter; and

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Having reviewed and considered the foregoing, the Court hereby:

___ DENIES the Motion.

___ GRANTS the Motion. The Subpoena is quashed. Former Mayor Durkan is not required to present herself for deposition or to produce documents requested in the Subpoena.

SO ORDERED THIS ___ day of March 2022.

HONORABLE SUZANNE R. PARISIEN

Presented By:

K&L GATES LLP

By: _____

G. William Shaw, WSBA # 8573
Benjamin C. Woodruff, WSBA # 56618
Emaan R. Jaber, WSBA # 56990
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Attorneys for Jenny Durkan

1 **CERTIFICATE OF SERVICE**

2 I hereby declare under penalty of perjury under the laws of the State of Washington that
3 on this date, I caused a true and correct copy of the foregoing document to be served on the
4 following in the manner(s) indicated:

5 Susan B. Mindenbergs, WSBA #20545
6 Law Office of Susan B. Mindenbergs
7 705 Second Avenue, Suite 1050
8 Seattle, WA 98104
9 Telephone: (206) 447-1560
10 Facsimile: (206) 447-1523
11 Email: susanmm@msn.com

- Via E-Filing
- Via Legal Messenger
- Via Email
- Via U.S. Mail
- Via Fax

12 *Attorney for Plaintiffs*

13 Jeffrey L. Needle, WSBA #6346
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20 jneedle@jneedlelaw.com

- Via E-Filing
- Via Legal Messenger
- Via Email
- Via U.S. Mail
- Via Fax

21 *Attorney for Plaintiffs*

22 DATED this 20th day of March, 2023 at Seattle, Washington.

23 /s/ Dawnelle Patterson
24 Dawnelle Patterson
25 Sr. Practice Assistant
26
27